

This letter addresses the resale of “Motor Fuel”. See 86 Ill. Adm. Code 130.1405. (This is a GIL.)

October 8, 2013

Dear Xxxxx:

This letter is in response to your letters dated May 6, 2013, and May 21, 2013, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter of May 6, 2013, you have stated and made inquiry as follows:

I am writing as counsel for COMPANY (‘Company’). Attached is my Power of Attorney for the Illinois Department of Revenue. By this letter, Company is requesting a Private Letter Ruling regarding anticipated business activity and the Illinois Motor Fuel Tax Law.

In the near future, Company anticipates that it will commence business. Company will act as a broker or facilitator in the ‘after market’ for certain hydrocarbon products (‘Product’). Company will purchase the Product from vehicle salvage yards, vehicle repair businesses and other businesses which may have Product in its possession. Company will direct third party transport businesses where to obtain and deliver the Product. Company will have no bulk storage.

The Product is the liquid contents of vehicle fuel tanks. The Product will usually consist of gasoline or other fuels which were placed in the tanks AND any contaminants, other hydrocarbon liquids, solids, chemicals, or other materials that may have been mixed intentionally or unintentionally with the tank contents. The Product will not be saleable as ‘motor fuel’ because it does not meet federal or state requirements without further grading, testing, refining, etc.

Company anticipates selling the Product to businesses which are licensed distributors (‘Customers’) of motor fuel under the Illinois Motor Fuel Tax Law. In some (but not all) instances, Company will test the Product to determine its

moisture or contaminant levels and so advise its customers. Company will do no refining or separation into grades of the Product. When Company sells the Product to its Customer, Company will not know the use of the Product by the Customer, i.e., whether the Customer will refine or treat the Product so as to make it 'motor fuel', whether the Customer will sell the Product to a refinery, whether the Customer will dispose of the Product as waste or for some reason use other than motor fuel, etc.

Company believes that any motor fuel in Product was previously taxed as motor fuel. For example, if the Product is a typical automotive fuel, that Product was extremely likely to have been taxed as motor fuel when it was purchased by the vehicle's prior owner. Under the Illinois Motor Fuel Tax Law, obtaining motor fuel by an end user without the payment of tax is virtually impossible other than dyed diesel. The Product will include little or no dyed diesel. Also, if Customer converts the Product to saleable motor fuel, Customer will presumably collect and remit any applicable motor fuel and sales taxes at that time of sale.

Company submitted an REG-8-A on DATE. On DATE, the Department denied the request for license. (See attached copies of 4-16-13 and attached). The Department letter states that Company does 'not qualify'. Presumably, Company does not qualify because it either or both is not selling motor fuel and is not a distributor.

Company is not selling motor fuel as that term is defined in the Motor Fuel Tax Law 35 ILCS 505/1.1, 1.13, and 5. The Product will not meet those specifications. Also, Company is not a 'Distributor' as that term is defined in 35 ILCS 505/1.2. Company will not transport motor fuel, nor will it distribute motor fuel and have bulk storage.

As Company has not yet commenced business, it is under no audit and is involved in no litigation with the Department.

Company has received no previous ruling by the Department on this issue other than the letter of April 16, 2013 (attached).

Company and its counsel representative are aware of no contrary authority after a review of the statute, regulations and rulings of the Department. Company and counsel have spoken to Department employees who informally indicated that Company would not be subject to the Motor Fuel Tax Law.

Company submits that it should not be subject to collecting and remitting under the Motor Fuel Tax Law. The Department of Revenue's guidance will be greatly appreciated. If Company and counsel can provide any further information, please contact the undersigned.

In your letter of May 21, 2013 you have stated as follows:

Attached is my prior Request of May 6, 2013 for reference COMPANY ('Company') would like to amend its prior Request. As its business model develops, Company has learned that it may transfer amounts of Product that will contain liquids which were once treated as dyed diesel. In our May 6 Request, Company believed such Product would be rarely involved. Any such Product will be so designated, handled separately and invoiced with such information.

As described in the May 6 Request, the Product will be of an unknown quality or specification. Any Product which contains dyed diesel will likewise not be saleable as 'motor fuel' without further grading, testing, refining, etc. The Customers will be responsible for the use of the Product. Company anticipates, as before, that its customers, will be licensed distributors who regularly deal in dyed diesel.

Again as with the May 6 Request, Company and counsel have spoken to Department employees who administer the motor fuel tax law. Informally, those persons indicated that invoices should be kept on all transactions but that the Product as a salvage product was not subject to the motor fuel tax law.

All other facts and representations remain the same. Company felt it should amend its letter since some Product may include dyed diesel. Thank you for your consideration.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department has decided that it will not issue a Private Letter Ruling in regards to your request but issue this General Information Letter instead.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. "Gross receipts" means the total selling price or the amount of such sales. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 35 ILCS 105/3; 86 Ill. Adm. Code 150.101.

These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their

Retailers' Occupation Tax liability incurred on those sales. If the retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. *See* 86 Ill. Adm. Code 150.130.

When an Illinois retailer sells tangible personal property and delivers it in Illinois, sales tax is due unless an exemption can be documented. The resale exemption is applicable when making purchases of tangible personal property that the purchaser intends to in turn sell. For general information regarding resale certificates, the Department's regulation entitled "Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale," is found at 86 Ill. Adm. Code 130.1405.

A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale.

We have insufficient information to determine whether the product your client will resale is "motor fuel". "Motor Fuel" means all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles. Among other things, "Motor Fuel" includes "Special Fuel" as defined in Section 1.13 of this Act. (35 ILCS 505/1.1) Note, however, when your client sells tangible personal property, unless it can document an exemption, it will be subject to all applicable state and local taxes.

The Motor Fuel Tax Law is set forth in Chapter 35 of the Illinois Compiled Statutes, Section 505/1 and following. The administrative regulations for the Motor Fuel Tax can be found at 86 Illinois Administrative Code Part 500. In particular, you may want to review Section 500.100 which includes the definitions for distributor, receiver, and supplier of motor fuel and also Section 500.201 which explains the licensing requirements.

Generally, if a business is purchasing motor fuel in Illinois and selling it in Illinois in the same form in which it purchased the motor fuel (i.e. without any production, refining, blending, compounding or manufacturing of its own), it would qualify as a retailer, only. In that case, it would need to be registered as a retailer in Illinois. However, if such a business is engaged in production, refining, blending, compounding or manufacturing fuel in this State, or any other qualifying activities, it may be a distributor, receiver, or supplier.

If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Debra M. Boggess
Associate Counsel